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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,413	01/28/2004	Carnell K. Dennis	09385-00002-US	2914
23416	7590	06/29/2005	EXAMINER	
CONNOLLY BOVE LODGE & HUTZ, LLP P O BOX 2207 WILMINGTON, DE 19899			DAWSON, GLENN K	
			ART UNIT	PAPER NUMBER
			3731	

DATE MAILED: 06/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/766,413

Applicant(s)

DENNIS, CARNELL K.

Examiner

Glenn K. Dawson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 19-23 is/are allowed.
- 6) ☒ Claim(s) 1-5, 8-14, 16-18 is/are rejected.
- 7) ☒ Claim(s) 6, 7 and 15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>01-28-2004</u>  | 6) <input type="checkbox"/> Other: ____                                     |

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-5,8 and 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wright-4657010 in view of White, et al.-4739755.

Wright discloses a mask having an upper portion and a lower portion. A plurality of accordion folds extends from the top portion towards the bottom portion. A strap 26 (adjustment member) with holes accepts snaps on the mask to hold the folds in different configurations thus changing the width of the mask. As the width of the mask has a

"length" or distance, the examiner contends that adjusting the adjustment member obtains a desired "length (or distance) of the mask. Additionally, Wright discloses a bottom of the mask has adjustment members to change the effective length of the mask. Snaps/apertures or Velcro patches are disclosed, but other means could be used as well. White discloses that it was known to provide accordion folds near the bottom portion of a facemask in order to change the length of the mask. It would have been obvious to have used the accordion folds of White instead of the two-part system of Wright, as it would be easier to manufacture and use. Additionally, the examiner contends that since Wright teaches of using a strap/apertures system in the top of the mask to hold folds in an orientation, it would have been obvious to use such a system on the bottom of the mask to hold those folds in an orientation, since Wright already teaches that such a structure is usable to retain the folds in a position.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wright-'010 in view of White, et al.-'755, as applied to claim 1 above, and further in view of Wortz, et al.-3441020.

Wright as modified by White makes obvious the invention as claimed with the exception of the material of the mask. Wortz discloses a facemask made out of polyethylene. It would have been obvious to have made the mask of Wright out of polyethylene, as this material has sufficient rigidity to maintain its configuration, yet is sufficiently resilient to enable the mask to seal properly against different facial contours.

Claims 14 and 16-18 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Wright-4657010 in view of White-'755.

Wright discloses a mask having an upper portion and a lower portion. A plurality of accordion folds extends from the top portion towards the bottom portion. A strap 26 (adjustment member) with holes accepts snaps on the mask to hold the folds in different configurations thus changing the width of the mask. As the width of the mask has a "length" or distance, the examiner contends that adjusting the adjustment member obtains a desired "length (or distance) of the mask. However, in the event that this is not found persuasive, exchanging the expansion system of Wright with that of White incorporating folds into the bottom portion of the mask would have been obvious for the same reasons noted above.

#### ***Allowable Subject Matter***

Claims 19-23 are allowed.

Claims 6,7 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Glenn K. Dawson whose telephone number is 703-308-4304. The examiner can normally be reached on M-Th 7:30-5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on 703-308-2154. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Glenn K Dawson  
Primary Examiner  
Art Unit 3731

Gkd  
24 June 2005